

THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSILHAME AZZIZ,
Plaintiff

V.

MICHAEL CHERTOFF, as Secretary of the Department
of Homeland Security; EDUARDO AGUIRRE, as
Director of the U.S. Citizenship & Immigration
Services; DENIS C. RIORDAN, District Director
of the U.S. Citizenship & Immigration Services
for Boston, Massachusetts
Defendants

RECEIPT # 63547
 AMOUNT \$ 250
 SUMMONS ISSUED Y-3
 LOCAL RULE 4.1 _____
 WAIVER FORM _____
 MCF ISSUED _____
 BY DPTY. CLK. 1
 DATE 4-14-05

CIVIL ACTION FILE NO.

05cv10751-NMCMAGISTRATE JUDGE SorokinCOMPLAINT REVIEW OF DENIAL OF NATURALIZATION

NOW comes Ilhame Azziz, plaintiff in the above-captioned matter and hereby state as follows:

1. This action is brought against the Defendants to review de novo, an unlawful and an improper denial of an application for naturalization filed with the Office of the Attorney General, through the Department of Homeland Security and the U.S. Citizenship & Immigration Services (formerly Bureau of Citizenship & Immigration Services or Immigration & Naturalization Service of the Department of Justice).

PARTIES

2. The Plaintiff, Ilhame Azziz, a resident of Massachusetts, is native and citizen of Morocco and a legal permanent resident of the United States, who filed an application for naturalization that was denied by the U.S. Citizenship & Immigration Services (formerly known as Bureau of Citizenship & Immigration Services (BCIS) formerly the Immigration & Naturalization Service).
3. The Defendant, Michael Chertoff, is the Secretary of the Department Homeland Security, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Homeland Security and the Department of Justice. 8 USC §1103(a). More specifically, the Secretary of the Department Homeland Security is responsible for the adjudication of applications for naturalization filed pursuant to the Immigration and Nationality Act (INA). The U.S. Citizenship & Immigration Service is an agency within the Department of Homeland Security to whom the authority has in part been delegated, and is subject to the Secretary of the Department Homeland Security's supervision.
4. The Defendant, Eduardo Aguirre, Director is an official of the U.S. Citizenship &

Immigration Services (USCIS) generally charged with supervisory authority over all operations of the USCIS. As will be shown, the Defendant Acting Director is the official under whose supervision and control the Plaintiff's application for naturalization was adjudicated.

5. The Defendant, Denis C. Riordan, District Director is an official of the U.S. Citizenship & Immigration Services generally charged with supervisory authority over all operations of the BCIS within his District with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B). As will be shown, Defendant District Director is the official whose office has been processing various parts of the Plaintiff's application for naturalization that was properly filed.

JURISDICTION

6. Jurisdiction in this case is proper under INA Section 310(c). According to said statute judicial review is available to the plaintiff whose application for naturalization, after a hearing before an immigration officer under INA Section 336(a), may seek review of such denial before this court in accordance with chapter 7 of title 5, United States Code [5 USC §§701 et seq.].

VENUE

7. Venue is proper in this court, pursuant to 28 USC §1331(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant is located and performs his official duties.

CAUSE OF ACTION De Novo Review of Denial of Naturalization

8. On or about February 28, 2000, the Plaintiff submitted an application for naturalization (Form N-400) and the proper filing fee together with supporting documents to the Defendants.
9. On or about January 22, 2001, the Plaintiff appeared before an immigration officer for an interview in connection with the afore-mentioned application.
10. On June 7, 2001, the Plaintiff received a notice stating that she had to re-appear for an examination.
11. On October 10, 2002, U.S. Citizenship & Immigration Services (formerly the Bureau of Citizenship & Immigration Services) denied the Plaintiff's application based on the records of proceedings and references Section 318 of the Immigration and Nationality Act, 8 U.S.C. 1429, which states in part: ...No person shall be naturalized unless he or she has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place,

manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry.

12. On December 11, 2003, the Plaintiff filed (Form N-336) a request for a hearing on a decision on naturalization proceedings under Section 336 of the Immigration and Nationality Act, of the decision dated October 10, 2002 with the U.S. Citizenship & Immigration Services (formerly Bureau of Citizenship & Immigration Services, formerly the Immigration & Naturalization Service).
13. On December 15, 2004, the USCIS issued a decision in response to the Plaintiff's request for review of the original agency determination. The agency denied the Plaintiff's application for naturalization and its decision was based in whole or in part on an inaccurate understanding of the facts of the case, as evidenced in their written decision.

PRAYER

10. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully pray that the Defendants be cited to appear herein and that, upon due consideration, the Court:
 - (a) Conduct a hearing de novo on the application;
 - (b) Grant the Plaintiff's request for Naturalization as a U.S. Citizen; and
 - (c) Granting such other relief at law and in equity as justice may require.

The Plaintiff,
By her Attorneys,



Desmond P. FitzGerald
FitzGerald & Company, LLC
18 Tremont Street, Suite 210
Boston, Massachusetts 02108
Telephone (617) 523-6320
Facsimile (617) 5236-6324
dfitzgerald@fitzgeraldlawcompany.com
Bar No. 461613

JS 44 (Rev. 11/04) Case 1:05-cv-10751-NMG Document 1-2 Filed 04/14/2005 Page 1 of 2
CIVIL COVER SHEET
The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ILHAME AZZIZ

(b) County of Residence of First Listed Plaintiff NORFOLK
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

MICHAEL CHERTOFF, ET AL.,

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

05 10751 NMG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> LABOR	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 840 Trademark	<input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 950 Constitutionality of State Statutes
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Section 336 of the Immigration & Nationality Act

Brief description of cause:
De Novo review of a denial of application of naturalization

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions).

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/14/2005

FOR OFFICE USE ONLY

Desmond P. Fitzgerald

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Ilhame Azziz v. Michael Chertoff, et al

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

05-10751-NMG

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

A. If yes, in which division do all of the non-governmental parties reside? YES NO Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Desmond P. Fitzgerald FitzGerald & Company, LLC
ADDRESS 18 Tremont Street, Suite 210, Boston, MA 02108

TELEPHONE NO. (617) 523-6320